

1 that this bank had terminated. I think it's therefore fair
2 to ask him at that point, at this point did he consider the
3 deal off or was the deal still on

4 JUDGE SIPPEL: Well, that's fine.

5 MR. SOUTHMAYD: And if the deal was still on, on
6 what basis he believed that.

7 JUDGE SIPPEL: Well, that's where it becomes a
8 problem. If he could testify in a general way of what he
9 understood could happen is one thing. But if he going to
10 start going into specific based on hearsay, that's where we
11 are going to have to put an end to it

12 The other thing is that I -- I mean, I really
13 don't know how critical this is.

14 MR. SOUTHMAYD: I understand. It's just one of
15 those things I would like to get straight.

16 JUDGE SIPPEL: And I will try to let you do it.

17 MR. SOUTHMAYD: Thank you.

18 JUDGE SIPPEL: But we have got to do it within the
19 framework of the rules of evidence.

20 All right, let's get Mr. Becker. Would somebody
21 go get Mr. Becker?

22 (Pause.)

23 JUDGE SIPPEL: Mr. Becker, you are back on the
24 stand.

25 We are going to permit a line of questioning.

1 Counsel is going to direct you to a Bureau exhibit which was
2 a bank letter generally saying that their relationship with
3 Mr. Buchanan had terminated. And then Mr. Southmayd is
4 going to ask you a few questions based on that.

5 THE WITNESS: Okay. Do you have the exhibit in
6 front of you?

7 BY MR. SOUTHMAYD:

8 Q Mr. Becker, if you could refer to EB Exhibit 17

9 A I have it.

10 Q You have that?

11 A Yes.

12 Q At some point did you become aware of this letter?

13 A I don't think I ever saw the letter. I became
14 aware of the results of the letter.

15 Q And how is that?

16 A Mr. Buchanan told me --

17 Q Go ahead and finish.

18 A Well, he told me that the bank loan was basically
19 on hold pending approval of the deal; that they had waited a
20 year, the SBA time is up. They would have to reapply for
21 the loan.

22 Q In fact, didn't you testify to that earlier this
23 morning?

24 A Yes.

25 Q At the point you learned that, did you consider

1 this sale of the translators to Mr. Buchanan off?

2 JUDGE SIPPEL: You're talking about now from the
3 business end of it?

4 MR. SOUTHMAYD: From the business end of it.

5 THE WITNESS: No, not necessarily.

6 JUDGE SIPPEL: What was the basis for your
7 thinking that?

8 THE WITNESS: Because Mr. Buchanan had told me
9 that --

10 JUDGE SIPPEL: No, no, don't tell me what he told
11 you.

12 THE WITNESS: I'm sorry.

13 JUDGE SIPPEL: What did you think was going to
14 happen? What did you think could happen? What were the
15 alternatives that could happen?

16 THE WITNESS: The alternatives that could happen
17 is the deal still could close.

18 JUDGE SIPPEL: The SBA deal?

19 THE WITNESS: **NO.**

20 JUDGE SIPPEL: Or your deal?

21 THE WITNESS: No, a deal with alternate financing.

22 JUDGE SIPPEL: Yes, okay.

23 THE WITNESS: **A** deal with alternate
24 financing. Petitioner

25 BY MR. SOUTHMAYD:

1 Q So you believed the deal was still on?

2 A Yes.

3 JUDGE SIPPEL: all right.

4 BY MR. SOUTHMAYD:

5 Q And when was the first time you believed the deal
6 was off?

7 A The deal was off for sure in 2000, I think it was
8 March of 2000. That was -- it was a done deal, it was not
9 going through in March of 2000 for sure.

10 Q And how did you become convinced in March of 2000
11 the deal was off with Mr. Buchanan?

12 A I believe he sent me a letter to that effect.

13 Q Mr. Becker, is that the letter that is in EB
14 Exhibit 15 --

15 A No.

16 Q -- page 2?

17 A No. I don't see it.

18 Q Can you describe the letter, Mr. Becker?

19 A I think we -- I don't remember for sure. I
20 thought we produced it in the Bureau's request for
21 documents. But the letter essentially said that the deal
22 was off but it was -- it did contain an offer to purchase
23 **the** translators because of what had happened, that only five
24 of the nine translators were essentially viable translators,
25 that Mr. Buchanan offered to buy the stations, or to go

1 through with the deal even though the four were going to be
2 of no use. He would pay 10 cents on the dollar or pay me
3 \$10,000 cash.

4 Q Is this letter contained in EB Exhibit 19 at page
5 4 and 5?

6 A Oh, yeah, there it is. Yes. Yes, that's it.

7 Q So it was at this point in your mind the deal was
8 over?

9 A It was over for two reasons. One, I didn't want
10 to --

11 Q I asked you was it --

12 A Yes, yes.

13 Q -- at this point in your mind the deal --

14 A Yes.

15 Q Thank you.

16 A Sorry.

17 JUDGE SIPPEL: You mean it was at this point. You
18 mean in March 2000?

19 MR. SOUTHMAYD: March 1, 2000.

20 JUDGE SIPPEL: Which is the date of the letter
21 that's in Exhibit 19.

22 MR. SOUTHMAYD: Correct.

23 THE WITNESS: Yes.

24 MR. SOUTHMAYD: At page 15 of the exhibit.

25 JUDGE SIPPEL: All right. Shall we move on to

1 another area?

2 MR. SOUTHMAYD: Yes, Your Honor.

3 BY MR. SOUTHMAYD:

4 Q Mr. Becker, do you recall being asked questions by
5 counsel for the Commission concerning 47 U.S. Code, Section
6 408?

7 A Yes.

8 MR. SOUTHMAYD: Your Honor, may I show the witness
9 a copy of this?

10 JUDGE SIPPEL: Is that a copy of the statute?

11 MR. SOUTHMAYD: Yes, sir.

12 JUDGE SIPPEL: Show it to Mr. Shook and Ms.
13 Lancaster. If they have no problem, I have no problem.

14 (Pause.)

15 BY MR. SOUTHMAYD:

16 Q Would you review that, please, Mr. Becker?

17 JUDGE SIPPEL: Let's go off the record while he
18 does so

19 (Pause off the record.)

20 BY MR. SOUTHMAYD:

21 Q Mr. Becker, do you remember counsel to the
22 commission reading certain portions of this statute on the
23 record yesterday?

24 A I remember him referring to 408.

25 Q Okay.

1 A Yes.

2 Q Well, I refer you to the statute, and ask what your
3 understanding is in this regard. When the Commission issues
4 an order, when is it effective?

5 A Pursuant to 408, it's effective on 30 calendar
6 days from the date upon which the public notice of the order
7 is given unless the Commission makes a different effective
8 date.

9 Q Mr. Becker, if you could refer to public notice
10 Exhibit 13.

11 A I have it.

12 Q Based on Section 408, what is your understanding
13 as to when this order was effective?

14 A It becomes effective, except as otherwise provided
15 in the chapter, the order becomes effective 30 days from the
16 public notice of the order given.

17 Q And I think there was testimony in response to
18 this exhibit and questions from counsel that pursuant to
19 this order you were ordered to terminate the operation of
20 seven of your translators on one day's notice; is that
21 correct?

22 A That is correct.

23 Q So in your mind, Mr. Becker, assuming you were to
24 comply with this order, what would the day be that you would
25 be required to comply with it?

1 A On the first day following the 30 days, so on the
2 thirty-first day.

3 Q Thirty-one day?

4 A Yes. Unless --

5 Q Thirty-one days after the release of this order?

6 A After public notice of the order is given unless
7 and except as otherwise provided in the chapter some other
8 action is taken.

9 Q Would you -- (static)

10 A -- files an appeal in Section 402.

11 Q Of this order?

12 A Of this order.

13 Q Is Section 4 of -- in this chapter?

14 A -- (static)

15 Q Did you file your appeal prior to 31 days after
16 the May 18, 2001 date on this order.

17 A Yes.

18 Q And **so** having filed this appeal, what was your
19 understanding of your obligation to comply with this order
20 at that point?

21 A Okay. Filing the appeal under 402 rendered the
22 order a non-final order because it is subject to judicial
23 review which will either eventually affirm or deny the order
24 by the reviewing court. And therefore under Section 405,
25 which provides for an hearing, rehearing pursuant to Section

1 405, we have continuing authority to operate pursuant to
2 Section 307(c)(3) of the Communications Act because although
3 the Commission terminated my licenses, deleted the call
4 signs and all that, the licenses continued in effect under
5 405, which provides for the appeals to be taken under 402,
6 which is "except as otherwise provided in this chapter."
7 Those are the other provisions of the Chapter 5, which
8 include 402 and 405.

9 Q Thank you.

10 If you could refer to official notice Exhibit 12.

11 A I have it.

12 Q Is that the memorandum, opinion and order released
13 February 14, 2000?

14 A It is.

15 Q Have you read this order before?

16 A Yes.

17 Q Are you generally familiar with it?

18 A Yes.

19 Q Mr. Becker, were you ordered by the Federal
20 Communications Commission in this order to take certain
21 actions?

22 A Yes.

23 Q What were they?

24 A In the ordering clauses, "Further ordered
25 Peninsula within 30 days of release date of the order

1 consummate the authorized assignments of the nine
2 translators."

3 And the order also, in paragraph 15, terminated 60
4 days from the release date of the order the waivers of
5 74.1231(b) for our Seward translator stations K272DG and
6 K285EG in Seward.

7 Q So can you tell me, 60 days from that day would
8 have been when?

9 A April 14th of 2000.

10 Q So it's your understanding that you were required
11 by this order to terminate the Seward translators on April
12 16, 2000?

13 A Well, the -- the order -- here is what happens.
14 The order terminated the waivers which effectively renders
15 the stations off the air because without the waivers there
16 is no way to broadcast these stations without an alternate
17 signal. So they effectively would have gone off on April
18 14th of 2000.

19 Q Thank you.

20 Mr. Becker, did you consummate the sale of this
21 station to Coastal pursuant to the order of February 14th?

22 A No, I couldn't because Coastal backed out in the
23 March 1st letter of 2000.

24 Q Did you terminate the Wrangell waivers and
25 operation of the Seward stations on April 16th?

1 A No.

2 Q Commission fine you for failing to do either?

3 A No.

4 Q Commission issue a show cause order against you --

5 A No.

6 Q -- why your licenses should be revoked for not
7 doing either?

8 A No.

9 Q In your mind is there a reason that you failed to
10 comply with this order and yet received no penalties from
11 the Commission?

12 A Yes.

13 Q And what is that?

14 A I filed an appeal with the D.C. Circuit Court of
15 this order.

16 Q And so what did that mean?

17 A It rendered it non-final, and subject to review of
18 the court.

19 Q Did the Commission at some point -- strike that.

20 Did the Commission at some point remove the
21 condition that the Seward translators terminate their
22 operation?

23 A Yes.

24 Q When was that?

25 A In the subsequent order, the May 2001 order, they

1 removed that condition.

2 Q Is this the order under official notice Exhibit
3 13?

4 A Yes.

5 Q Released May 2001?

6 A Yes.

7 Q And how did they reverse themselves on the Seward
8 termination order from February of 2000?

9 A Well, they followed the correct procedure in this
10 order whereas the previous order they failed to follow the
11 316 parts in -- order before modifying a license --.

12 Q In fact, if you terminated your shield translator
13 operations on April 16th, would you be able to operate then
14 upon the release of this order on May 18, 2001?

15 A No.

16 Q Why not?

17 A Because it would have been more than -- at the
18 time.

19 Q Is that your testimony? Even though the --order
20 reversed its position --.

21 A --

22 Q The 2001 order.

23 A Yes.

24 Q Are you saying even though they said that their
25 action in February of 2000 was improper that you would not

1 have been able to put the translators back on the air?

2 A That is correct. They would be done there.

3 Their --

4 JUDGE SIPPEL: Are you going go to into another
5 area?

6 MR. SOUTHMAYD: Your Honor, I am almost finished
7 with this one, Your Honor. It would be convenient to take a
8 break. I have one more -- two more questions on this.

9 JUDGE SIPPEL: All right, go ahead. Finish up.

10 BY MR. SOUTHMAYD:

11 Q Mr. Becker, at the time the Commission issued this
12 May 18, 2001 order, did you have an appeal pending in the
13 U.S. Court of Appeals?

14 A Yes. Oh, no.

15 Q So between the time you filed your appeal to the
16 2000 order and this date the Commission took no action in
17 connection with the 2000 order; is that correct?

16 A Yes.

19 MR. SOUTHMAYD: This would be a convenient time to
20 break.

21 JUDGE SIPPEL: -- It's 3:30. Let's come back --.
22 What time will you be finished with Mr. Becker?

23 MR. SOUTHMAYD: I **would** say by 4:30.

24 JUDGE SIPPEL: (Static)

25 (Discussion off the record.)

1 JUDGE SIPPEL: Are we on the record? Are we on?

2 We will proceed with Mr. Becker this afternoon.

3 We are going to finish around 4:30, close to that time,
4 maybe a little after. There will be no other witnesses
5 called to testify today however. So any other witnesses who
6 are in the building can now be excused, and I am going to
7 extend this. We will come back no later than five of four
8 to get started with Mr. Becker again.

9 Okay, we're off the record. Thank you.

10 (Whereupon, a recess was taken.)

11 JUDGE SIPPEL: Mr. Becker, you are still under
12 oath.

13 Mr. Southmayd, *you* may proceed?

14 MR. SOUTHMAYD: Thank you, Your Honor.

15 BY MR. SOUTHMAYD:

16 Q Mr. Becker, could you refer to public notice
17 Exhibit 12, or official notice Exhibit 12? I'm sorry.

18 A I have it.

19 Q And is that the memorandum, opinion and order
20 dated February 14, 2000?

21 A Sorry. That's the wrong one. Now I have it.

22 Yes.

23 Q Okay. Subsequent to the release of this order did
24 Peninsula take any judicial action?

25 A We filed for an appeal.

1 Q With who?

2 A The D.C. Circuit Court of Appeals.

3 Q And what was the result of that action?

4 A The court eventually issued an order stating that
5 the February 2000 order was non-final.

6 Q Now was that point briefed by the parties to the
7 appeal?

8 A We did file a brief if I remember right, yes.

9 Q And who were the parties to that appeal?

10 A Peninsula and the Federal Communications
11 Commission.

12 Q And do you recall what the Federal Communications
13 Commission position was in their brief?

14 A Yes.

15 MR. SHOOK: Your Honor, I am perfectly happy to
16 have the brief in the record if it turns out --

17 JUDGE SIPPEL: Well, I don't know if we are going
18 to need that.

19 MR. SOUTHMAYD: No.

20 JUDGE SIPPEL: Let **Mr.** Southmayd continue.

21 THE WITNESS: Yes.

22 BY MR. SOUTHMAYD:

23 Q And what was it?

24 A That the FCC order was final.

25 Q And was that position sustained by the court?

1 A No.

2 Q And what did that mean to you, being Peninsula, in
3 terms of actions taken in this order by the Commission?

4 A Well, it meant that I actually had two bases for
5 continuing to operate. Since the order was not final, I
6 could continue to operate under Rule 1.62, and I could
7 continue to operate under 307(c)(3).

8 Q Is that same issue presently pending -- do you
9 have an appeal pending of the May 2001 order before the
10 Court of Appeals?

11 A Yes.

12 Q Is that issue presently pending before the U.S.
13 Court of Appeals?

14 A It is

15 Q I would like to refer you, and perhaps counsel to
16 the Commission could help me, to the Ninth Circuit opinion
17 that you were questioned on earlier in the day by counsel.

18 MR. SHOOK: You're referring to official notice
19 Exhibit 17?

20 MR. SOUTHMAYD: Yes.

21 THE WITNESS: Yes.

22 MR. SOUTHMAYD: Thank you very much.

23 BY MR. SOUTHMAYD:

24 Q Mr. Becker, do you recall being questioned by
25 counsel on official notice Exhibit 17 earlier in the day?

1 A Things are getting fuzzy, but I believe so, yes.

2 Q If you could refer to page 12 in the exhibit, do
3 you recall reviewing this earlier in the day?

4 A Yes, I do now that I read this page.

5 Q Okay. What is your understanding of what actions
6 the court took her with regard to 47 CFR 1.62(a)(1)?

7 A Well, the only ruling that the court made was that
8 the definition of pending in CFR 73.3523(d)(2) was
9 essentially not applicable to Section 1.62.

10 Q To the best of your knowledge, Mr. Becker, in
11 connection with the Commission's May 2001 order, has any
12 court taken any action based on the merits of your Section
13 47 USC 402, 405 or 408 beliefs?

14 A That has not yet been ruled on by the D.C.
15 Circuit.

16 Q Is it before the D.C. Circuit?

17 A It is.

18 MR. SOUTHMAYD: If I could have just one moment,
19 Your Honor.

20 JUDGE SIPPEL: Certainly.

21 (Pause)

22 MR. SOUTHMAYD: That's all I have, Your Honor.

23 JUDGE SIPPEL: Thank you, Mr. Southmayd.

24 Mr. Shook?

25 //

1 RECROSS-EXAMINATION

2 BY MR. SHOOK:

3 Q Mr. Becker, with respect to office notice Exhibit
4 12, that's the February 14, 2000, memorandum, opinion and
5 order that your counsel asked you a number of questions
6 about, Peninsula filed a pleading to reject that order, did
7 it not?

8 A It did.

9 Q And if I can help you there by pointing you to EB
10 Exhibit 20.

11 A He did.

12 Q He did.

13 And that filing was made essentially
14 simultaneously with your court appeal?

15 A The rejection was filed, timely filed after our
16 appeal, to the best of my knowledge.

17 Q So you had your appeal to the Court of Appeals
18 filed and then there was the rejection filed, and so
19 essentially the two matters were pending at the same time?

20 A Yes. Yeah, within the 30-day window. That's
21 correct.

22 Q And I direct your attention to the second page of
23 EB Exhibit 20, and in terms of **what** apparently Peninsula
24 believed the effect of the Section 1.110 filing to be --

25 A I'm sorry. I'm not with you.

1 Q Okay. ~~Go~~ to page 2 of EB 20.

2 A I do not have a page 2.

3 Oh, I'm sorry. Are you in the exhibits?

4 Q When I say EB, I'm sorry if you didn't follow me.
5 I was referring to the Enforcement Bureau exhibits.

6 A Oh, I'm sorry. Okay, I'm with you now.

7 JUDGE SIPPEL: Just so you're clear, Mr. Becker,
8 they are all exhibits. One book is referred to as
9 Enforcement Bureau exhibits, and the other book is referred
10 to as official notice exhibits, but they are all exhibits.

11 THE WITNESS: I understand.

12 I'm with you.

13 BY MR. SHOOK:

14 Q If you look at the second paragraph or actually
15 the only full paragraph that appears on page 2, you will
16 note that Peninsula's belief is that the February 2000 order
17 of the Commission has become null and void as a consequence
18 of the 1.110 filing?

19 A Yes, I see that.

20 Q And that was Peninsula's belief at the time?

21 A Yes.

22 Q So there wasn't any reason to comply with the
23 February 2000 order because of this filing, correct?

24 A That was the purpose of filing 1.110.

25 Q So your court appeal really had nothing to do with

1 whether or not the February 2000 order had any viability; it
2 was this document that affected the viability of that order.

3 A I'm not sure I understand your question. I'm not
4 an attorney, so could you run that by me again?

5 A In terms of the state of mind of Peninsula as to
6 whether or not it was going to consummate the sale of the
7 translators as ordered by the Commission in the February
8 2000 order, isn't -- wasn't it Peninsula's belief that the
9 filing of the 1.110 rejection was sufficient to stop the
10 impact of the Commission's order?

11 A Yes, it would have vacated the order and then it
12 would have been set for a hearing pursuant to 1.110. And we
13 expected, fully expected to get a hearing on the issue.

14 Q And so the court appeal that had been filed
15 roughly at about the same time really had no impact
16 whatsoever on Peninsula's duty to comply with the
17 Commission's February 2000 order.

18 A Yeah, there is two -- well, there is sort of
19 things at work here. The court -- the appeal to the D.C.
20 Circuit Court was far more reaching than simply this order.
21 It went all the way back to the '96 letter from Linda Blair.
22 We had the whole issues in that brief. Whereas this 1.110
23 rejected only the February 2001 order.

24 Q The focus of my question though is to follow up on
25 what your counsel was asking you in terms of why it was that

1 Peninsula did not comply with the directives in the February
2 2000 order

3 It appears to me from EB 20, page 2, that
4 Peninsula's mindset is, well, we don't have to comply with
5 the Commission's order because we have filed this 1.110
6 rejection.

7 A Well, in part. Because we had also filed an
8 appeal, we were also under 307(c) (3) entitled to continue to
9 operate. So we actually had two bases going here.

10 Q And that theory is espoused in a pleading or a
11 brief that Peninsula filed to the Court of Appeals?

12 A I don't know. I don't have that appeal fresh in
13 my mind at this point.

14 Q Now your counsel also asked you about grants that
15 had been made in January of 1999 to Peninsula for the Seward
16 translators.

17 A That is correct.

18 Q The grants to which he is referring were what?
19 Were they staff actions? What were those grants? How were
20 those grants evidenced?

21 A We got licenses from the FCC.

22 Q Did you get those licenses pursuant to the
23 December 10, 1988 order which appears as official notice
24 Exhibit 11?

25 A Exhibit 11.

1 MR. SOUTHMAYD: Excuse me. Was that official
2 notice 11?

3 MR. SHOOK: Yes.

4 BY MR. SHOOK:

5 Q In particular, if you would look at pages 8 and 9,
6 paragraph 18.

7 A I would say no.

8 Q And why would you say no?

9 A Well, I'll try to answer this as briefly as
10 possible.

11 We had to move our translator, we had two
12 translators, move our translators from Seward because we
13 lost our lease at Alaskon, and so we filed a modification
14 application to change the coordinates of the transfer site
15 to change certain things with regard to the antenna, and the
16 pattern, the coverage, and move the translator from the
17 previous site to the new site. And I don't know if we
18 specified delivery via satellite versus -- but it was still
19 alternate signal, and we filed that modification. And the
20 commission granted the licenses and put a date, an
21 expiration date of February 1, 2006.

22 So we got brand new licenses with a new location
23 in '99.

24 Q Now, to your understanding, was that consistent or
25 inconsistent with the action that the Commission took in

1 this FCC 98-314 order released December 10, 1998?

2 A This was -- let's see, '98. About 13 months
3 prior.

4 Q Thirteen months prior or one month prior?

5 A January '99. One month prior, yeah.

6 Consistent? I don't know. The Commission has not
7 been consistent on much. Who knows?

8 Q Now the applications that are being granted here
9 are the renewal applications, correct?

10 A These are renewal applications, that is correct.
11 And we got licenses issued with no conditions noted, granted
12 one month later, for Seward.

13 Q By the staff?

14 A Well, I don't know. It's the FCC to me.

15 Q Are you saying, are you saying that you believe
16 that what you received in 1999 undid what the Commission did
17 in this December '98 order?

18 A I got licenses. I didn't question them.

19 Q So is that a yes?

20 A I wouldn't phrase it as "undoing" the order. It
21 just looks to me like another inconsistency **of** the FCC.

22 Q So it was your impression that when you received
23 the January '99 document from the Commission, that the
24 directive in the '98 order disappeared?

25 A No, because we filed the petition for

1 reconsideration of the '98 order. *So* we were asking for
2 reconsideration of the old order.

3 Q So by asking for reconsideration and continuing to
4 prosecute that petition for reconsideration, you understood
5 that unless the Commission overturned the condition that
6 appears here in paragraph 18 of FCC 98-314, that you were
7 going to have to Consummate the Coastal or risk losing your
8 licenses.

9 A Well, we were under the petition for
10 reconsideration. We were objecting to the new conditions
11 that were added to this condition to consummate.

12 So it was questionable whether or not we would
13 have to consummate under this new condition, which was to
14 consummate it within 30 days. That was a brand new
15 condition.

16 Q A brand new condition as opposed to a follow up to
17 what had gone on previously? And by that I mean, first
18 there was the '95 applications which were renewed if you
19 were going to file appropriate assignment applications.

20 A Yes. The only condition there was to divest.

21 Q And isn't that -- isn't that consistent? We're
22 talking about divesting here.

23 A The problem with this order is that it added the
24 conditions that -- I believe this is correct -- that we had
25 to wait -- let's see here. I don't remember if this is the

1 one where we had to get our '97 licenses renewed.

2 Q No, it's not. This is the one that actually
3 addresses the '97 renewal applications.

4 A Okay. I'm rather confused here.

5 Okay, yeah, I'm -- all right, this order signaled
6 that the Commission would not, or they would remove -- the
7 future removal of the Seward translator waivers, and did not
8 grant the request for the Kodiak.

9 So I'm sorry. The 30-day, I believe, was the
10 following order. I had these mixed up. I think the 30-
11 day -- no, that was 60 days, and then the May 2000 one was
12 30 days, so okay.

13 It appears that the condition was consummation.
14 However, that did present a problem because we didn't have
15 Kodiak back on the air and the Seward translators were
16 threatened with being removed, or the waivers being removed.
17 So we had a problem with this order.

18 If they had granted the Kodiak waivers to restore
19 service, and they never threatened Seward, we would have
20 consummated at this point. It would have been a done deal.

21 JUDGE SIPPEL: Now, this order that you're
22 referring to just when you testified to just now --

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: -- is this FCC 98-314?

25 THE WITNESS: Yes.

1 JUDGE SIPPEL: Released December 10, 1998.

2 THE WITNESS: Exactly.

3 JUDGE SIPPEL: Yes.

4 THE WITNESS: That is correct. Yeah, our deal
5 would have --

6 JUDGE SIPPEL: That's alright. That's alright.
7 You have answered my question, and you finished answering
8 the other question.

9 THE WITNESS: Okay.

10 BY MR. SHOOK:

11 Q Now, there was a question put to you by counsel
12 about whether or not there was advertising on the translator
13 as such. And you had indicated, I believe, in your response
14 that the advertisements were placed on the full power
15 stations and those advertisements then reached whatever it
16 was that the full power stations reached.

17 A Yes.

18 Q Now as a follow up to that though, you did
19 indicate, I believe, to your counsel with respect to Kodiak,
20 in terms of advertisements that were going **to** be sold for
21 the Kodiak market, that -- I mean, there wasn't any, there
22 was no purpose in having these advertisements go on any
23 place else, was there?

24 A No. That's incorrect.

25 Q And what would be correct?

1 A Well, we have clients in Kodiak who are interested
2 in reaching -- I can think of one client in particular -- a
3 marine distributor who is interested in the business that he
4 would generate from Seward, from Kenai or Homer. And he
5 would see a benefit on advertising on the full power station
6 as well as all the other translators in the system.

7 Q But you would also have clients in Kodiak who were
8 simply trying to reach residents of Kodiak, correct?

9 A Yes, you get a mix.

10 Q And likewise, from Seward, that you --

11 A Yes.

12 Q -- would have advertisers in Seward that were
13 attempting to reach only people in Seward?

14 A As well as elsewhere. In general, people that
15 advertise on our station see the benefit of having the large
16 coverage area, and we make no bones about that. It's in our
17 sales presentation.

18 Q Now there were also some questions from your
19 counsel about the translators that existed in the
20 Kenai/Soldotna area, and whether or not it would make any
21 sense for somebody who owned the translators in that area to
22 perhaps use a different primary station than what was being
23 used.

24 A Yes.

25 Q Now the primary station that was being rebroadcast

1 on the Kenai/Soldotna translators was a station that
2 ordinarily could not be listened to in that area, correct?

3 A No.

4 Q No? You could listen to it?

5 A Depends where you are. Some places you get it.
6 Some places you don't. So it's highly variable.

7 Q The station we're talking about is the station
8 from Homer?

9 A Yes.

10 Q And so by having the translators in the
11 Kenai/Soldotna area, you were able to assure that there were
12 clear signals for KWVW-FM throughout the Kenai/Soldotna
13 area?

14 A I would qualify that. I would say yes, but with a
15 qualifier that the translators are low power translators.
16 They don't have the coverage that a full power station does.
17 So the coverage area is small

18 Q At least predicted?

19 A Yeah.

20 Q I mean, did you ever drive from Kenai to Homer and
21 see whether or not you could listen to your -- either of
22 your translators?

23 A Oh, all the time. That's why I make sure they are
24 on the air.

25 Q And how far could you get?

1 A They go out a long ways.

2 Q Sometimes all the way to Homer.

3 A No. Because in Homer, the signal you are hearing
4 is 104.9 in Homer. You are not hearing the signal in Kenai.

5 Q I see. So there is a point where you lose the one
6 and pick up the other?

7 A Yes.

8 Q Now your counsel also asked you some questions
9 about inspections that had taken place in the Kenai/Soldotna
10 area. Apparently these were inspections of KPEN?

11 A Yeah, we -- yes.

12 Q And when did these inspections occur? I'm not
13 sure that that was brought out.

14 A I don't have the dates on the top of my head.

15 Q Do you know approximately when the last such
16 inspection occurred?

17 A It seems like we get inspected every year. I
18 don't know.

19 Q Oh, yes, there is one more area I want to cover.
20 I want you to look at EB Exhibit 14.

21 A I have it.

22 Q Now, in terms of the -- in terms of the various
23 markets that are on here, I want to go through them one by
24 one, the Sitka, Alaska situation, do you see it in paragraph
25 four?

1 A Yes.

2 Q Now the 1993 waiver that is being referred to
3 here, do you know it was that actually granted that waiver?

4 A Well, it would have to be the Commission.

5 Q You were referring though to a particular action
6 by the Commission, were you not?

7 A Yes, I would assume so from the text; yes.

8 Q And I think I had discussed with -- we had
9 discussed a little bit with your counsel that these
10 underlying letters were going to try to be produced because
11 in our review the files I couldn't find them.

12 In any event, with respect to the Sitka situation,
13 do you happen to know from reviewing the Commission's files
14 or from reviewing any other documents whether the translator
15 is inside or outside of the coverage area of KRSA?

16 A That particular translator is a cross-band
17 translator.

18 JUDGE SIPPEL: Can you answer the question?

19 THE WITNESS: Well, yes, I believe I can answer
20 it, but it's not just a yes or no answer.

21 JUDGE SIPPEL: Well, do the best you can.

22 THE WITNESS: Okay. Yes, I will -- I will say
23 yes

24 I'm sorry. Repeat the question, make sure I get
25 the right yes or no.

1 MR. SHOOK: Okay.

2 BY MR. SHOOK:

3 Q Have you reviewed any documents that would tell
4 you whether or not KSRA's primary contour completely
5 encompasses the contour of the translator?

6 A I have not reviewed any documents, no.

7 Q Have you ever been to Sitka?

8 A Yes.

9 Q Can you listen to KRSA?

10 A Yes, on a translator.

11 Q You can't listen to it on the AM?

12 A I don't know.

13 THE WITNESS: Can I make a statement?

14 JUDGE SIPPEL: Sure. Well, okay.

15 THE WITNESS: The Wrangell's waiver here involves
16 an ownership restriction. It doesn't involve a signal
17 contract.

18 BY MR. SHOOK:

19 Q My question to you was did you know whether or not
20 the primary service contour for KRSA encompassed the area
21 served by the translator, and *you* indicated you did not
22 know.

23 A That's correct.

24 Q Now with respect to the Wrangell Alaska situation,
25 do you know whether the primary service contour of KRSA

1 encompasses the primary service contour of the translator?

2 A No.

3 Q With respect to Haines, do you know whether the
4 primary service contour of KRSA encompasses the primary
5 service contour of the translator?

6 A No.

7 Q With respect to Cordova, the translator there is a
8 non-commercial educational translator, is it not?

9 A The channel would indicate yes.

10 Q Do you have any knowledge as to whether or not
11 that translator rebroadcasts any commercial matter?

12 A No.

13 Q With respect to Barrow that's referenced in
14 paragraph **six**, was this the -- was this the situation where
15 there was an 800-mile difference between the primary station
16 and where the translator was?

17 A That was my estimate of the distance, yes.

18 Q Do you have any knowledge whether the full --
19 whether the station being translated into Barrow sells any
20 commercial matter in Barrow?

21 A It's my understanding KJNP is a commercial AM
22 station licensed in North Pole, Alaska, so on that basis
23 since it is a commercial station, I would say yes.

24 Q But you don't **know**?

25 A **Well**, it was a commercial station the last time

1 that I knew of. I don't know. You know, things change.
2 But to the best of my knowledge, KJNP is a commercial
3 station. And I have heard, I have been to North Pole, and I
4 have heard ads on that radio station.

5 Q Now the entity to which the translator is
6 licensed, is that the same entity that is the licensee of
7 the AM station being rebroadcast?

8 A Yes.

9 Q Is that a commercial entity or a non-commercial
10 educational entity?

11 A Oh, you're asking about North Pole? I thought you
12 meant as a general policy. I'm sorry. Repeat your
13 question.

14 Q Okay. Paragraph six references that the
15 translator in Barrow is licensed to an entity called the
16 Evangelistic Alaska Mission Fellowship, Inc.

17 Is that a commercial entity or a non-commercial
18 entity?

19 A I don't know.

20 Q Do you happen to know whether KJNP is a commercial
21 station or a non-commercial station?

22 A I believe I answered that. It's my belief that
23 it's a commercial AM station.

24 Q And that belief is predicated on what?

25 A Having been to North Pole, and I heard

1 advertisements on the station.

2 Q And it is licensed though to the -- is it licensed
3 to the Evangelistic Alaska Mission Fellowship, Inc.?

4 A As far as I know, yes.

5 Q And when was it that you were last in North Pole,
6 Alaska listing to KJNP?

7 A The last time I was in North Pole, I believe, was
8 about 15 years ago.

9 Q With respect to Dillingham, are the translator and
10 the primary station co-owned?

11 A I don't know for sure.

12 Q Well, you make a reference here to Steven P.
13 Glover as either the licensee or the operator of the
14 translator, and there is no indication that Mr. Glover has
15 any role whatsoever in KAKN.

16 A My personal knowledge *is* that Mr. Glover was a
17 member of the board of directors *of* the corporation that
18 owned KAKN, which was the Lutheran something. I don't
19 remember the full name.

20 Q You don't know whether he maintains any
21 relationship with that board, do you?

22 A Not currently.

23 Excuse me. This was filed in what? '96?

24 Q This particular pleading was filed, I believe, in
25 1999, but I will look at the date here to *see*.

1 MR. SOUTHMAYD: Correct.

2 BY MR. SHOOK:

3 Q January of 1999.

4 A Thank you.

5 Q Moving on to the next page, with respect to the
6 community of Touck.

7 A It's pronounced Touck.

8 Q Touck. Again. we're talking about the rebroadcast
9 of KJNP, which you believe to be a commercial station, but
10 you have not listened to for the last 15 years.

11 A No, I -- I hadn't been to North Pole in the last
12 15 years. However, I have heard it occasionally on the **AM**
13 band through, you know, skip conditions at night. But I
14 haven't been there for 15 years.

15 Q When is the last time you heard it?

16 A Guessing, about 10 years.

17 Q Finally, with respect to the Glen Allen situation.

18 A Paragraph nine?

19 Q Paragraph nine.

20 A Okay.

21 Q Do you have any knowledge as to whether or not the
22 translator that is referenced is still in operation?

23 A I heard that translator, I want to say two years
24 ago driving through Glen Allen, it was on the air at the
25 time.

1 Q If I were to tell **you** that the license had been
2 canceled for that translator in April **of** 1999, would that be
3 news to you?

4 A No, because I looked it up on the database and saw
5 the same thing. Yet the translator remained on the air.

6 Q Subsequent to April of 1999?

7 A Yes, it was operating.

8 Q Well, I guess we have got some work to do up
9 there.

10 A Yes, I -- I wondered about it.

11 JUDGE SIPPEL: Back to Alaska, Mr. Shook.

12 MR. SHOOK: Winter approaches. I'm not so Sure I
13 want to go.

14 THE WITNESS: And it's on a mountain top.

15 MR. SHOOK: I'm sure I don't want to go.

16 (Laughter.)

17 JUDGE SIPPEL: Have you got much more?

18 MR. SHOOK: No, that was all that was covered in
19 that particular pleading.

20 I'm going to confer with co-counsel. I think we
21 are finished.

22 JUDGE SIPPEL: Let's go off the record.

23 (Pause off the record.)

24 JUDGE SIPPEL: Mr. Shook?

25 MR. SHOOK: Your Honor, we have nothing further

1 JUDGE SIPPEL: Thank you, Mr. Shook.

2 Mr. Southmayd?

3 MR. SOUTHMAYD: One quick question, Your Honor,
4 not to belabor this on a matter that was raised by Mr. Shook
5 that I had not raised.

6 JUDGE SIPPEL: I'm still waiting to hear a quick
7 question, but go ahead.

8 REDIRECT EXAMINATION (CONT'D)

9 BY MR. SOUTHMAYD:

10 Q Mr. Becker, counsel for the Commission asked you
11 about your Section 1.110 rejection filed. Do you recall
12 that?

13 A Yes.

14 Q Did the Commission -- to your knowledge, did the
15 Commission ever determine whether it believed your Section
16 1.110 rejection filing was sufficient to obviate the need
17 for you to comply with the 2000 order?

18 A I never received anything from the Commission
19 telling me otherwise.

20 Q Did the Commission make any determination in the
21 May 18, 2001 order about your rejection?

22 A Yes. They said it was untimely filed.

23 Q And therefore?

24 A I forget the wording, but --

25 MR. SHOOK: Thank you. That's all I have, Your

1 Honor.

2 JUDGE SIPPEL: (Static)

3 MR. SHOOK: --

4 JUDGE SIPPEL: Okay, that concludes this witness.

5 Mr. Becker, you are excused as a witness. --

6 tomorrow, you -- in the courtroom --.

7 All right, we are in recess until nine o'clock

8 tomorrow morning, and we will have the Bureau's next

9 witness, is that correct?

10 MR. SOUTHMAYD: Could I ask who that will be, Your
11 Honor?

12 MR. SHOOK: Our first witness is going to be John
13 Davis.

14 MR. SOUTHMAYD: Thank you.

15 JUDGE SIPPEL: All right, we are in recess. Thank
16 you, gentlemen and ladies.

17 (Whereupon, at 5:00 p.m., the hearing was
18 recessed, to resume at 9:00 a.m. on Thursday, September 26,
19 2002.)

20 //

21 //

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

PCC DOCKET NO.: EB-02-21
CASE TITLE: Perin, Communications
HEARING DATE: 9/25/02
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the **above** case before the Federal Communications Commission,:

Date: 9/25/02
Edna Thomas
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 9/25/02
Jocelyn Bue
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 9/10/8/02
Ann Angi
Official Proofreader
Heritage Reporting Corporation